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**PRELIMINARY DRAFT**  
**No. 3420**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

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**DIGEST**

**Citations Affected:** IC 5-2-6-20; IC 10-13-3-40; IC 35-48.

**Synopsis:** Ephedrine and pseudoephedrine. Makes ephedrine and pseudoephedrine schedule V controlled substances. Repeals provisions concerning the establishment and operation of an electronic log to record the sale without a prescription of drugs containing ephedrine and pseudoephedrine.

**Effective:** July 1, 2011.



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A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 10-13-3-40, AS ADDED BY P.L.190-2006,  
2       SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2011]: Sec. 40. (a) The department may use the appropriations  
4       described in subsection (b) for ~~either or both of the following purposes~~  
5       (1) operating and maintaining the central repository for criminal  
6       history data.  
7       (2) ~~Establishing, operating, or maintaining an electronic log to~~  
8       ~~record the sale of drugs containing ephedrine or pseudoephedrine~~  
9       ~~in accordance with IC 35-48-4-14.7.~~

10       (b) If the amount of money that is deposited in the state general fund  
11       during a state fiscal year from handgun license fees (as described in  
12       IC 35-47-2-4) exceeds one million one hundred thousand dollars  
13       (\$1,100,000), the excess is appropriated from the state general fund to  
14       the department for the purposes described in subsection (a). An  
15       appropriation under this section is subject to allotment by the budget  
16       agency.

17       SECTION 2. IC 35-48-2-12, AS AMENDED BY P.L.22-2008,  
18       SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
19       JULY 1, 2011]: Sec. 12. (a) The controlled substances listed in this  
20       section are included in schedule V.

21       (b) Narcotic drugs containing nonnarcotic active medicinal  
22       ingredients. Any compound, mixture, or preparation containing any of  
23       the following narcotic drugs, or their salts calculated as the free  
24       anhydrous base or alkaloid, in the following quantities, which shall  
25       include one (1) or more nonnarcotic active medicinal ingredients in  
26       sufficient proportion to confer upon the compound, mixture, or  
27       preparation, valuable medicinal qualities other than those possessed by  
28       the narcotic drug alone:

29               (1) Not more than 200 milligrams of codeine per 100 milliliters  
30               or per 100 grams.

31               (2) Not more than 100 milligrams of dihydrocodeine per 100



milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligrams of difenoxin (9168), and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Pregabalin (2782).

(d) Pyrovalerone (1485).

**(e) A material, compound, mixture, or preparation that contains a quantity of any of the following substances, pure or adulterated:**

**(1) Ephedrine.**

**(2) Pseudoephedrine.**

SECTION 3. IC 35-48-4-14.7, AS AMENDED BY P.L.97-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14.7. (a) This section does not apply to the following:

(1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription.

(2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (f).

(3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (f).

(b) The following definitions apply throughout this section:

(1) "Constant video monitoring" means the surveillance by an automated camera that:

(A) records at least one (1) photograph or digital image every ten (10) seconds;

(B) retains a photograph or digital image for at least seventy-two (72) hours;

(C) has sufficient resolution and magnification to permit the identification of a person in the area under surveillance; and

(D) stores a recorded photograph or digital image at a location that is immediately accessible to a law enforcement officer.

(2) "Convenience package" means a package that contains a drug



1 having as an active ingredient not more than one hundred twenty  
2 (120) milligrams of ephedrine or pseudoephedrine, or both.

3 (3) "Ephedrine" means pure or adulterated ephedrine.

4 (4) "Pseudoephedrine" means pure or adulterated  
5 pseudoephedrine.

6 (5) "Suspicious order" means a sale or transfer of a drug  
7 containing ephedrine or pseudoephedrine if the sale or transfer:

8 (A) is a sale or transfer that the retail distributor, wholesaler,  
9 or manufacturer is required to report to the United States Drug  
10 Enforcement Administration;

11 (B) appears suspicious to the retail distributor, wholesaler, or  
12 manufacturer in light of the recommendations contained in  
13 Appendix A of the report to the United States attorney general  
14 by the suspicious orders task force under the federal  
15 Comprehensive Methamphetamine Control Act of 1996; or

16 (C) is for cash or a money order in a total amount of at least  
17 two hundred dollars (\$200).

18 (6) "Unusual theft" means the theft or unexplained disappearance  
19 from a particular retail store of drugs containing ten (10) grams or  
20 more of ephedrine, pseudoephedrine, or both in a twenty-four (24)  
21 hour period.

22 (c) This subsection does not apply to a convenience package. A  
23 person may sell a drug that contains the active ingredient of ephedrine  
24 **or** pseudoephedrine, or both, only if the person complies with the  
25 following conditions:

26 (1) The person does not sell the drug to a person less than  
27 eighteen (18) years of age.

28 (2) The person does not sell drugs containing more than three and  
29 six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both,  
30 to one (1) individual on one (1) day, or nine (9) grams of  
31 ephedrine or pseudoephedrine, or both, to one (1) individual in a  
32 thirty (30) day period.

33 (3) The person requires:

34 ~~(A)~~ the purchaser to produce a state or federal identification  
35 card.

36 ~~(B)~~ the purchaser to complete a paper or an electronic log in  
37 a format approved by the state police department with the  
38 purchaser's name, address, and driver's license or other  
39 identification number; and

40 ~~(C)~~ the clerk who is conducting the transaction to initial or  
41 electronically record the clerk's identification on the log.

42 Records from the completion of a log must be retained for at least  
43 two (2) years. A law enforcement officer has the right to inspect  
44 and copy a log or the records from the completion of a log in  
45 accordance with state and federal law. A person may not sell or  
46 release a log or the records from the completion of a log for a



commercial purpose. The Indiana criminal justice institute may obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. A retailer who in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(4) The person stores the drug:

(A) behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee; or

(B) directly in front of the pharmacy counter in the direct line of sight of an employee at the pharmacy counter, in an area under constant video monitoring, if the drug is sold in a retail establishment that:

(i) is a pharmacy; or

(ii) contains a pharmacy that is open for business.

(5) The person posts a sign warning that:

(A) it is a criminal offense for a person to purchase drugs containing more than nine (9) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period;

(B) it is a criminal offense for a person to purchase drugs containing more than three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day; and

(C) depending on the amount of ephedrine or pseudoephedrine contained in the drug, purchasing more than one (1) package of drugs containing ephedrine or pseudoephedrine on one (1) day may be a crime.

The warning sign must list maximum amounts of ephedrine or pseudoephedrine that may be purchased in both grams and milligrams.

(d) A person may not purchase drugs containing more than three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day, or more than nine (9) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period.

(e) This subsection only applies to convenience packages. A person may not sell drugs containing more than one hundred twenty (120) milligrams of ephedrine or pseudoephedrine, or both, in any one (1) transaction if the drugs are sold in convenience packages. A person who sells convenience packages must secure the convenience packages in at least one (1) of the following ways:

(1) The convenience package must be stored not more than thirty (30) feet away from a checkout station or counter and must be in the direct line of sight of an employee at the checkout station or counter.



1 (2) The convenience package must be protected by a reliable  
2 anti-theft device that uses package tags and detection alarms  
3 designed to prevent theft.

4 (3) The convenience package must be stored in restricted access  
5 shelving that permits a purchaser to remove not more than one (1)  
6 package every fifteen (15) seconds.

7 (4) The convenience package must be stored in an area that is  
8 under constant video monitoring, and a sign placed near the  
9 convenience package must warn that the area is under constant  
10 video monitoring.

11 (f) A retail distributor, wholesaler, or manufacturer shall report a  
12 suspicious order to the state police department in writing.

13 (g) Not later than three (3) days after the discovery of an unusual  
14 theft at a particular retail store, the retailer shall report the unusual theft  
15 to the state police department in writing. If three (3) unusual thefts  
16 occur in a thirty (30) day period at a particular retail store, the retailer  
17 shall, for at least one hundred eighty (180) days after the date of the last  
18 unusual theft, locate all drugs containing ephedrine or pseudoephedrine  
19 at that particular retail store behind a counter in an area inaccessible to  
20 a customer or in a locked display case that makes the drug unavailable  
21 to customers without the assistance of an employee.

22 (h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance  
23 after February 1, 2005, that is more stringent than this section.

24 (i) A person who knowingly or intentionally violates this section  
25 commits a Class C misdemeanor. However, the offense is a Class A  
26 misdemeanor if the person has a prior unrelated conviction under this  
27 section.

28 ~~(j) Before June 30, 2007, the state police department shall submit a~~  
29 ~~report to the legislative council detailing the effectiveness of this~~  
30 ~~section in reducing the illicit production of methamphetamine. The~~  
31 ~~report must describe the number of arrests or convictions that are~~  
32 ~~attributable to the identification and logging requirements contained in~~  
33 ~~this section, and must include recommendations for future action. The~~  
34 ~~report must be in an electronic format under IC 5-14-6.~~

35 SECTION 4. IC 5-2-6-20 IS REPEALED [EFFECTIVE JULY 1,  
36 2011].

